

Application No. 10/781,738

**IN THE DRAWINGS:**

Please replace Figure 2 as originally filed with this application with the enclosed Replacement Sheet of Figure 2, accompanied by a Letter to the Official Draftsperson. Figure 2 has been amended to change "Displaying Unit 1022" to be "Indicating Unit 1022" as disclosed in the specification.

## **REMARKS**

### **Claim Rejections**

Claims 1-4, 7, 8-10, 13, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston (WO 03/036889) in view of Sugaya et al. (2002/0049040). Claims 5 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston in view of Sugaya et al., in further view of Bartas (2005/0060535), while claims 6 and 12 are rejected as unpatentable in view of the foregoing, in further view of Nakayama et al. (4,587,516).

### **Drawings**

Applicant has amended Fig. 2, as illustrated on the attached formal drawing, accompanied by a LETTER TO THE OFFICIAL DRAFTSPERSON. Figure 2 has been amended to change "Displaying Unit 1022" to be "Indicating Unit 1022" as disclosed in the specification. No "new matter" has been added to the original disclosure by the amendments to this figure. Entry of the corrected drawing is respectfully requested.

### **Claim Amendments**

By this Amendment, Applicant has canceled claims 5 and 11. Claims 1 and 8 have been amended to include the subject matter of claims 5 and 11, respectively. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The amended claims are directed toward: a method capable of indicating a communication quality and being used in a network transmission system having at least a first station and a second station, comprising the steps of: determining the communication quality of the network transmission system according to a data transmitted from the first station to the second station; and ***indicating the communication quality at the second station, wherein the network transmission system further comprises a server capable of interrupting a data***

***transmission between the first and second stations basing on the communication quality.***

Other embodiments are directed toward: a transmission system for network with communication quality indicating capability, comprising: a first station, transmitting a data via a network; a second station, receiving the data from the network; a detecting unit, disposed at the second station for detecting a data receiving condition in real time, and computing a communication according to the same; and an indicating unit, coupled to the detecting unit for ***indicating the communication quality at the second station, wherein the network transmission system further comprises a server capable of interrupting a data transmission between the first and second stations basing on the communication quality.***

Yet another embodiment is directed toward either of the above embodiments ***wherein the server is capable of recording the communication quality for future reference and inquiry.***

As a preliminary matter, Applicant notes that since claim 5 has been incorporated into claim 1, while claim 11 has been incorporated into claim 8, only the references cited against claims 5 and 11 (as well as dependent claims 6 and 11) will be discussed in detail below.

The Examiner has argued that Johnston and Sugaya et al. together substantially teach everything claimed in claims 1 and 8. Applicant does not acquiesce to the Examiner's characterization and further notes that Sugaya et al. fail to teach "indicating the communication quality at the second station," as recited in Claims 1 and 8. Instead, Sugaya's merely discloses the receiving station transmits a parameter report to the reserving station rather than indicating the communication quality at the second station.

In addition, on. p. 4 of the of the outstanding Office Action, the Examiner has admitted that both Johnston and Sugaya et al. fail to teach a server capable of interrupting a data transmission between the first and second stations based on the communication quality. Bartas is cited as providing this admitted deficiency. However, it is important to note that the interrupting in Bartas is performed by the second software application, rather than a **server**. It follows that the reference

cannot be said to teach "a server capable of interrupting a data transmission between the first and second stations basing on the communication quality." Claims 1 and 8.

Furthermore, on p. 5 of the of the outstanding Office Action, the Examiner has admitted that both Johnston and Sugaya et al. fail to teach a server capable of recording the communication quality for future reference and inquiry. Nakayama is cited as providing this deficiency. However, it is important to note that in Nakayama the recording is performed by the selection means rather than a **server**. It follows that the reference cannot be said to teach "the server is capable of recording the communication quality for future reference and inquiry." Claims 6 and 12.

It follows that even if the teachings of Johnston, Sugaya et al., Bartas, and Nakayama et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: a method capable of indicating a communication quality and being used in a network transmission system having at least a first station and a second station, comprising the steps of: determining the communication quality of the network transmission system according to a data transmitted from the first station to the second station; and indicating the communication quality at the second station, wherein the network transmission system further comprises a server capable of interrupting a data transmission between the first and second stations basing on the communication.

Nor does the combination suggest: a transmission system for network with communication quality indicating capability, comprising: a first station, transmitting a data via a network; a second station, receiving the data from the network; a detecting unit, disposed at the second station for detecting a data receiving condition in real time, and computing a communication according to the same; and an indicating unit, coupled to the detecting unit for indicating the communication quality at the second station, wherein the network transmission system further comprises a server capable of interrupting a data transmission between the first and second stations basing on the communication quality.

The combination further fails to suggest either of the above embodiments wherein the server is capable of recording the communication quality for future reference and inquiry.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when

resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Johnston, Sugaya et al., Bartas, or Nakayama et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Johnston, Sugaya et al., Bartas, nor Nakayama et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed method or system. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

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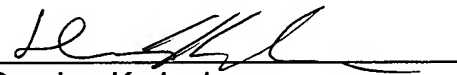
**Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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